

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Kelvin D. Daniel, et al.,

Plaintiffs,

vs.

Swift Transportation Corporation,

Defendant

**Case No.: CV 11-01548-PHX-ROS**

**RULE 16 SCHEDULING ORDER**

Pursuant to the terms of the Case Management Plan and the representations made by the parties at the Rule 16 Scheduling Conference, all parties shall comply with the deadlines established in this Order.

A. All proceedings concerning this case shall be in accordance with the Federal Rules of Civil Procedure.

B. All Initial Disclosures as defined in FRCP 26(a)(1), if not already disclosed prior to the Scheduling Conference, shall be made no later than **January 9, 2012**.

C. To satisfy the requirements of FRCP 26(a)(1), the parties shall file with the Clerk of the Court a Notice of Initial Disclosure, rather than copies of the actual disclosures.

1 D. Procedural motions including Motions to Amend the Complaint or  
2 Answer, and Motions to Join Additional Parties shall be filed no later than **March**  
3 **15, 2012.**

4 All Motions to Amend shall attach a copy of the proposed complaint or answer.

5 E. The Parties shall disclose the identity of all persons who may be  
6 used at trial to present evidence under Federal Rules of Evidence (FRE) 701, 702,  
7 703, 704, and 705 no later than **April 1, 2013.** The Parties shall disclose the  
8 identity of all persons who may be used at trial to present rebuttal evidence under  
9 FRE 701, 702, 703, 704, or 705 no later than **May 1, 2013.** No deposition of any  
10 expert witness shall occur before the disclosures concerning expert witnesses  
11 mandated by this Order have been made.  
12

13 The disclosures of the identities of all persons who may be used at trial to  
14 present evidence under FRE 701, 702, 703, 704, or 705 shall also include all of the  
15 disclosures required by FRCP 26(a)(2)(B) if the witness is either (1) retained or  
16 specifically employed to provide expert testimony in the case, or (2) is an agent or  
17 employee of the party offering the testimony whose duties regularly involve  
18 giving expert testimony.<sup>1</sup>

19 F. The parties agree to bifurcate discovery, such that Phase I discovery  
20 will focus upon issues to be addressed by Plaintiffs' anticipated Motion for Class  
21 Certification. Phase II discovery will focus upon the merits of Plaintiffs' claims.  
22 The parties propose to complete Phase I discovery on or before **September 14,**  
23 **2012,** and to complete Phase II discovery on or before **May 31, 2013.** The  
24 proposed discovery schedule contemplates that Plaintiffs shall file their Motion for  
25 Class Certification on or before **October 1, 2012** and that Defendant will respond  
26 on or before **October 31, 2012.** The disposition of Plaintiffs' Motion for Class  
27

---

28 <sup>1</sup> The parties are on notice that this Order requires disclosure different than that  
required by FRCP 26(a)(2).

1 Certification will impact the necessity and scope of Phase II discovery. If class  
 2 certification is granted, the parties shall proceed with Phase II discovery regarding  
 3 the merits of Plaintiffs' claims, which shall be completed on or before **May 31,**  
 4 **2013.**

5 G. The parties shall finally supplement all discovery, including material  
 6 changes in expert witness opinions and material disclosures, pursuant to FRCP  
 7 26(a)(3), of all exhibits to be used and all witnesses to be called at trial, on or  
 8 before **May 10, 2013.**<sup>2</sup>

9 H. Discovery by interrogatory shall be governed by the national  
 10 uniform requirements set forth in FRCP 33 except as follows: (1) each party shall  
 11 be permitted 30 interrogatories in Phase I discovery; (2) each party shall be  
 12 permitted 30 interrogatories in Phase II discovery.

13 I. Depositions shall be limited by the national uniform requirements set  
 14 forth in Rules 30, 31, and 32 of the FRCP, except as follows:

15 1. Custodian of Record Depositions

16 The parties may take as many custodian of record depositions as is  
 17 necessary to authenticate any documents needed for trial. The parties will  
 18 endeavor to eliminate the need for such depositions by stipulation.

19 2. Additional Depositions

20 The parties may take up to 10 additional non-party depositions during  
 21 Phase I discovery, which shall not include putative class members unless the  
 22  
 23

---

24 <sup>2</sup> The parties are on notice that this order supersedes the "30 days before trial"  
 25 disclosure deadline contained in FRCP 26(a)(3). Therefore, failure to timely  
 26 supplement pursuant to Rule 26(e), including attempts to include witnesses and  
 27 exhibits in the Proposed Final Pretrial Order or at trial that were not previously  
 28 disclosed in a timely manner may result in the exclusion of such evidence at trial  
 or the imposition of other sanctions including dismissal and the imposition of  
 default pursuant to FRCP 37, the Local Rules of Civil Procedure of the District  
 Court, and the inherent power of the Court.

1 parties otherwise agree or the Court otherwise orders, and 10 additional non-party  
2 depositions during Phase II discovery.

3       3.     Time Limits for Party Depositions

4       The deposition time limits for party depositions shall be extended to 10  
5 hours per deponent for Plaintiffs and up to 5 Swift employees, but otherwise the  
6 presumptive limits contained in Fed. R. Civ. P. 30 shall apply.

7       J.     Motions on discovery matters are prohibited. Should a discovery  
8 dispute arise Counsel shall consult and make a sincere effort to resolve the  
9 matter(s). If the parties cannot reach a resolution, they are directed to jointly file  
10 and fax to (602)322-7529, a joint statement of the issue(s), limited to one page per  
11 issue. Upon review of the statement an Order will issue regarding further action  
12 required by the parties. This procedure differs from the procedure set forth in  
13 Local Rule 7.2(j).

14       The parties shall also consult the Court's Standing Order concerning  
15 discovery disputes to ensure full compliance with the Court's discovery dispute  
16 procedures, some of which are not included here. The Standing Order is available  
17 on the District of Arizona website:

18       [http://www.azd.uscourts.gov/azd/contacts.nsf/125a095259a5393407256ec10063ad](http://www.azd.uscourts.gov/azd/contacts.nsf/125a095259a5393407256ec10063ad7d?OpenView)  
19 [7d?OpenView](http://www.azd.uscourts.gov/azd/contacts.nsf/125a095259a5393407256ec10063ad7d?OpenView).

20       K.     This Order contemplates that each party will conduct discovery to  
21 permit completion within the deadline. Any discovery which results in insufficient  
22 time to undertake necessary additional discovery and which requires an extension  
23 of the discovery deadline will be met with disfavor, will only be granted for good  
24 cause or only to prevent manifest injustice pursuant to FRCP 16(b) and (e), and  
25 may result in denial of an extension, exclusion of evidence, or the imposition of  
26 other serious sanctions pursuant to FRCP 37(b),(c),(d).  
27  
28

1 L. All dispositive motions shall be filed no later than **July 1, 2013**.  
2 Unless permitted by Order of the Court, only **one** dispositive motion is allowed to  
3 be filed by each party.

4 M. All parties are specifically admonished that pursuant to LRCiv  
5 7.2(i), "[i]f a motion does not conform in all substantial respects with the  
6 requirements of this Rule, or **if the opposing party does not serve and file the**  
7 **required answering memoranda, or if counsel for any party fails to appear at**  
8 **the time and place for oral argument, such non-compliance may be deemed a**  
9 **consent to the denial or granting of the motion and the Court may dispose of**  
10 **the motion summarily."**

11 N. The parties shall keep the Court apprised of settlement negotiations  
12 and the progress of discovery. A joint statement to the Court concerning the status  
13 of settlement discussions (containing no specific settlement terms or offers) and  
14 the progress of discovery shall be filed by **June 14, 2012** and initially labeled  
15 'FIRST NOTICE OF DISCOVERY AND SETTLEMENT,' and shall be  
16 subsequently filed every FOUR (4) months thereafter. If settlement is reached the  
17 parties shall file a Notice of Settlement with the Clerk of the Court with a copy to  
18 Judge Silver's Chambers.

19 O. **A Joint Proposed Pretrial Order, all Motions in Limine, a Joint**  
20 **Statement of the Case, Joint Jury Instructions, Verdict Form, and Stipulated**  
21 ***Voir Dire* Questions** to be added to the Court's standard Jury Questionnaire shall  
22 be lodged and filed by **October 18, 2013**. If dispositive motions have been filed,  
23 the Joint Proposed Pretrial Order and Motions in Limine and other documents  
24 shall be due either on the above date or 30 days following resolution of the  
25 dispositive motions, whichever is later. The content of the Joint Proposed Pretrial  
26 Order is that prescribed in the Court's form of Joint Proposed Pretrial Order. [See  
27 Court's website: [www.azd.uscourts.gov](http://www.azd.uscourts.gov) under "Judges and Courtrooms/Orders,  
28 [Forms & Procedures](http://www.azd.uscourts.gov)"]. Responses to Motions in Limine are due 15 days after the

1 Motions are filed, and no Replies are permitted unless specifically ordered by the  
2 Court.

3 P. If the case will be tried to the Court, rather than to a jury, in addition  
4 to filing a **Joint Proposed Pretrial Order**, each party shall file **Proposed**  
5 **Findings of Fact and Conclusions of Law** on the same date the Joint Proposed  
6 Pretrial Order is due.

7 Q. The attorneys who will be trying the case for each of the parties shall  
8 appear at the **Final Pretrial Conference** that will be scheduled as promptly as  
9 possible after the filing of the Joint Proposed Pretrial Order. The attorneys  
10 appearing at the conference shall be prepared to address the merits of all issues  
11 raised in the Joint Proposed Pretrial Order and fully briefed Motions in Limine.  
12 Unless one has already been established, the Court will set a firm trial date at the  
13 **Pretrial Conference**, and will sign the **Final Pretrial Order** with any additional  
14 instructions for trial preparation.


15 R. Any other final pretrial matters required pursuant to FRCP 26(a)(3)  
16 are due in accordance with this Order prior to the preparation and filing of the  
17 **Joint Proposed Pretrial Order**.

18 S. The parties shall file their proposed voir dire questionnaire and  
19 questions, statement of the case, jury instructions, and form of verdict in  
20 WordPerfect 9.0 format in addition to other written materials filed with the Clerk  
21 of the Court.

22 T. An Interim Rule 16 Status Hearing is scheduled for **August 3, 2012**  
23 **at 10:00 a.m.** Prior to the Interim Hearing, counsel are to prepare and file a Joint  
24 Status Report by **July 27, 2012**.  
25  
26  
27  
28

1           This Court views compliance with the provisions of this Order as critical to  
2 its case management responsibilities and the responsibilities of the parties under  
3 FRCP 1.

4           Dated this 19th day of January, 2012.

5  
6  
7             
8           Roslyn D. Silver  
9           Chief United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28